

Attachment B - Certificate of Incorporation and Certificate of Authority

See Attached

COPY

File Number 6079-260-7

State of Illinois  
Office of  
The Secretary of State

Whereas, APPLICATION FOR CERTIFICATE OF AUTHORITY TO TRANSACT  
BUSINESS IN THIS STATE OF  
UTILITY.COM, INC.  
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE HAS BEEN FILED  
IN THE OFFICE OF THE SECRETARY OF STATE AS PROVIDED BY THE BUSINESS  
CORPORATION ACT OF ILLINOIS, IN FORCE JULY 1, A.D. 1984.

Now Therefore, I, Jesse White, Secretary of State of the State of Illinois, by virtue of the powers vested in me by law, do hereby issue this certificate and attach hereto a copy of the Application of the aforesaid corporation.

In Testimony Whereof, I hereto set my hand and cause to be  
affixed the Great Seal of the State of Illinois,  
at the City of Springfield, this 9TH  
day of DECEMBER A.D. 1999 and of  
the Independence of the United States the two  
hundred and 24TH



Jesse White

Secretary of State

*State of Delaware*

PAGE 1

*Office of the Secretary of State*

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "UTILITY.COM, INC.", FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF APRIL, A.D. 2000, AT 12:30 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



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Edward J. Freel, Secretary of State

**CERTIFICATE OF AMENDMENT  
OF  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
UTILITY.COM, INC.**

Utility.com, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Company"), does hereby certify:

**FIRST:** That, upon the unanimous written consent of the Board of Directors of the Company in accordance with the provisions of Section 141 of the General Corporation Law of the State of Delaware, a resolution was duly adopted setting forth a proposed amendment to the Amended and Restated Certificate of Incorporation of said Company, declaring said amendment to be advisable. The resolution setting forth the proposed amendment is as follows:

**RESOLVED:** That, subject to the approval of the stockholders of the Company, the first paragraph of Article FOUR of the Amended and Restated Certificate of Incorporation of the Company is hereby amended to read in its entirety as follows:

**"FOUR.** The corporation is authorized to issue two classes of stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares of Common Stock that the corporation is authorized to issue is 45,000,000, with a par value of \$0.001 per share. The total number of shares of Preferred Stock that the corporation is authorized to issue is 21,230,659 with a par value of \$0.001 per share, 4,000,000 of which are designated "*Series A Preferred Stock*," 750,000 of which are designated "*Series B Preferred Stock*," 4,150,977 of which are designated "*Series C Preferred Stock*," and 12,329,682 of which are designated "*Series D Preferred Stock*."

**SECOND:** That in lieu of a meeting and vote of the stockholders of the Company, (i) the holders of not less than a majority of the outstanding total number of shares of Common Stock, (ii) the holders of not less than a majority of the outstanding total number of shares of Preferred Stock, and (iii) the holders of not less than a majority of the outstanding total number of shares of each series of Preferred Stock, have given written consent to said amendment in accordance with the

SENT BY:

6-29- 0 :11:50AM :

UTILITY.COM→

770 232 9208;# 4/ 4  
NO. 382 11003

provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said Utility.com, Inc. has caused this Certificate to be signed by its duly authorized officer this 24th day of April, 2000.

UTILITY.COM, INC.

By: Chris King

Name: Chris King

Title: Chief Executive Officer


Office of the Secretary of State

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "UTILITY.COM, INC.", FILED IN THIS OFFICE ON THE NINTH DAY OF MARCH, A.D. 2000, AT 1:30 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



  
Edward J. Freel, Secretary of State

2962225 8100

001119927

AUTHENTICATION: 0305150

DATE: 03-09-00

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**UTILITY.COM, INC.**

**(Incorporated November 2, 1998)**

Utility.com, Inc. (the "*corporation*"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "*General Corporation Law*") hereby certifies as follows:

1. That the corporation was incorporated on November 2, 1998 under the name WorldWideEnergy, Inc., pursuant to the General Corporation Law.
2. Pursuant to Sections 242 and 245 of the General Corporation Law, this Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Certificate of Incorporation of the corporation.

3. The text of the Certificate of Incorporation is hereby amended and restated in its entirety as follows:

**ONE.** That the name of the corporation is: Utility.com, Inc.

**TWO.** The address of the corporation's registered office in the State of Delaware is 15 East, North Street, in the City of Dover, County of Kent, Delaware 19901. The name of its registered agent at such address is Incorporating Services, Ltd.

**THREE.** The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

**FOUR.** The corporation is authorized to issue two classes of stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares of Common Stock that the corporation is authorized to issue is 45,000,000, with a par value of \$0.001 per share. The total number of shares of Preferred Stock that the corporation is authorized to issue is 21,181,032 with a par value of \$0.001 per share, 4,000,000 of which are designated "*Series A Preferred Stock*," 750,000 of which are designated "*Series B Preferred Stock*," 4,150,977 of which are designated "*Series C Preferred Stock*," and 12,280,055 of which are designated "*Series D Preferred Stock*."

The remaining shares of Preferred Stock, if any, may be issued from time to time in one or more series. The board of directors of the corporation (the "*Board of Directors*") is expressly authorized to provide for the issuance of all or any of the remaining shares of the Preferred Stock in

one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designations, preferences, and relative, participating, optional or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such shares and as may be permitted by the General Corporation Law. The Board of Directors is also expressly authorized to decrease (but not below the number of shares of such series then outstanding) the number of shares of any series other than the subsequent to the issue of shares of that series. In case the number of shares of any such series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

The corporation shall from time to time in accordance with the laws of the State of Delaware increase the authorized amount of its Common Stock if at any time the number of shares of Common Stock remaining unissued and available for issuance upon conversion of the Preferred Stock shall not be sufficient to permit conversion of the Preferred Stock.

The relative rights, preferences, privileges and restrictions granted to or imposed upon the respective classes and series of the shares of capital stock or the holders thereof are as set forth below.

**Section 1. Dividends.** The holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock shall be entitled to receive on a parity basis, out of any funds legally available therefor, noncumulative dividends in an amount equal to \$0.0012 per share per annum, \$0.016 per share per annum, \$0.075 per share per annum, and \$0.14 per share per annum, respectively, when and if declared by the corporation's Board of Directors. No dividend shall be paid on the Common Stock in any year, other than dividends payable solely in capital stock, until all dividends for such year have been declared and paid on the Preferred Stock, and no dividends on the Common Stock shall be paid unless the amount of such dividend on the Common Stock is also paid on the Preferred Stock on an as-converted to Common Stock basis.

**Section 2. Liquidation Preference.**

(a) In the event of any liquidation, dissolution or winding up of the corporation, prior and in preference to any distribution of any of the assets or funds of the corporation to the holders of the Common Stock by reason of their ownership of such stock, (i) the holders of Series A Preferred Stock shall be entitled to receive for each outstanding share of Series A Preferred Stock then held by them an amount equal to \$0.05 plus declared but unpaid dividends on such share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like), (ii) the holders of Series B Preferred Stock shall be entitled to receive for each outstanding share of Series B Preferred Stock then held by them an amount equal to \$0.30 plus declared but unpaid dividends on such share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like), (iii) the holders of Series C Preferred Stock shall be entitled to receive for each outstanding share of Series C Preferred Stock then held by them an amount equal to \$1.41 plus



declared but unpaid dividends on such share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like) and, (iv) the holders of Series D Preferred Stock shall be entitled to receive for each outstanding share of Series D Preferred Stock then held by them an amount equal to \$2.60 plus declared but unpaid dividends on such share (as adjusted for any recapitalizations, stock combinations, stock dividends, stock splits and the like). The Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock shall rank on parity as to the receipt of the respective preferential amounts for each such series upon the occurrence of such event. If, upon the occurrence of a liquidation, dissolution or winding up, the assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be insufficient to permit the payment to such holders of Preferred Stock of the full aforementioned preferential amount, then the entire assets and funds of the corporation legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be distributed ratably among the holders of Preferred Stock in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) Upon a liquidation, dissolution or winding up of the corporation, and after payment to the holders of Preferred Stock of the amounts to which they are entitled pursuant to Section 2(a), all assets and funds of the corporation that remain legally available for distribution to stockholders by reason of their ownership of stock of the corporation shall be distributed ratably among the holders of Common Stock and Preferred Stock in proportion to the number of shares of Common Stock held by them or issuable upon the conversion of the Preferred Stock held by them and based on the total number of shares of Common Stock outstanding, or issuable upon conversion of the outstanding Preferred Stock, until such time as each holder of shares of Preferred Stock has received an aggregate liquidation amount under this Section 2(b) equal to 1.5 times the applicable Original Issue Price (as defined in Section 3(a) hereof) (as adjusted for recapitalizations, stock combinations, stock dividends, stock splits and the like). Thereafter, all such assets and funds shall be distributed ratably among the holders of Common Stock.

(c) For the purposes of this Section 2, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and to include, the corporation's sale of all or substantially all of its assets or the acquisition of this corporation by another entity by means of merger or consolidation resulting in the exchange of the outstanding shares of this corporation for securities or consideration issued, or caused to be issued, by the acquiring corporation or its subsidiary, unless the stockholders of the corporation hold at least 50% of the voting power of the surviving corporation in such a transaction.

(d) If any of the assets of this corporation are to be distributed under this Section for any other purpose, in a form other than cash, then the Board of Directors shall be empowered to, and shall promptly determine the value of the assets to be distributed to the holders of Preferred Stock and Common Stock. This corporation shall, upon receipt of such determination, give prompt written notice of the determination to each holder of shares of Preferred Stock and Common Stock. Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability covered by paragraph (ii) below:

(A) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the thirty (30) day period ending three (3) days prior to the closing;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors.

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 2(d)(i)(A), (B) or (C) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

### **Section 3. Conversion.**

The holders of Preferred Stock shall have conversion rights as follows:

(a) **Right to Convert.** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the corporation or any transfer agent for such Preferred Stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price of such share of Preferred Stock by the Conversion Price (the "Conversion Price") at the time in effect for a share of such series of Preferred Stock. The Original Issue Price per share of Series A Preferred Stock is \$0.05. The Conversion Price per share of Series A Preferred Stock initially shall be \$0.05, subject to adjustment from time to time as provided below. The Original Issue Price per share of the Series B Preferred Stock is \$0.30. The Conversion Price per share of the Series B Preferred Stock initially shall be \$0.30, subject to adjustment from time to time as provided below. The Original Issue Price per share of Series C Preferred Stock is \$1.41. The Conversion Price per share of Series C Preferred Stock initially shall be \$1.41, subject to adjustment from time to time as provided below. The Original Issue Price per share of Series D Preferred Stock is \$2.60. The Conversion Price per share of the Series D Preferred Stock initially shall be \$2.60, subject to adjustment from time to time as provided below.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price upon the earlier of (i) the closing of a firm commitment underwritten public offering pursuant to an effective registration

statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock to the public involving gross proceeds to the Company of not less than \$25,000,000 at a per share offering price of at least \$7.80, net of underwriting discounts and commissions (a "Qualified Initial Public Offering") and (ii) the consent of holders of not less than 50% of the then outstanding shares of each series of Preferred Stock.

(c) **Mechanics of Conversion.** No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price of such series of Preferred Stock. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock pursuant to Section 3(a), such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the corporation or of any transfer agent for such Preferred Stock, and shall give written notice by mail, postage prepaid, to the corporation at its principal corporate office, of the election to convert the same, and such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted. In the event of an automatic conversion pursuant to Section 3(b), the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holder of such shares and whether or not the certificates representing such shares are surrendered to the corporation or the transfer agent for such Preferred Stock; and the corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the corporation or the transfer agent for such Preferred Stock as provided above, or the holder notifies the corporation or the transfer agent for such Preferred Stock that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the corporation to indemnify the corporation from any loss incurred by it in connection with such certificates. The corporation shall, as soon as practicable thereafter, issue and deliver to such address as the holder may direct, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled. If the conversion is in connection with a public offering of securities described in Section 3(b), the conversion shall be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, and the conversion shall not be deemed to have occurred until immediately prior to the closing of such sale of securities.

(d) **Status of Converted Stock.** In the event any shares of Preferred Stock shall be converted pursuant to this Section 3, the shares so converted shall be canceled and shall not be reissued by the corporation.

(e) **Adjustment of Conversion Price of Preferred Stock.** The Conversion Prices shall be subject to adjustment from time to time as follows:

(i) **Adjustments for Subdivisions or Combinations of Common Stock.** In the event the outstanding shares of Common Stock shall be subdivided by stock split, stock dividend or otherwise, into a greater number of shares of Common Stock, the Conversion Price of

each series of Preferred Stock then in effect shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined or consolidated into a lesser number of shares of Common Stock, the Conversion Price of each series of Preferred Stock then in effect shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased.

(ii) Adjustments for Stock Dividends and Other Distributions. In the event the corporation makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, any distribution (excluding repurchases of securities by the corporation not made on a pro rata basis) payable in property or in securities of the corporation other than shares of Common Stock, and other than as otherwise adjusted for in this Section 3 or as provided for in Section 1 in connection with a dividend, then and in each such event the holders of Preferred Stock shall receive, at the time of such distribution, the amount of property or the number of securities of the corporation that they would have received had their Preferred Stock been converted into Common Stock on the date of such event.

(iii) Adjustments for Reorganizations, Reclassifications or Similar Events. If the Common Stock shall be changed into the same or a different number of shares of any other class or classes of stock or other securities or property, whether by capital reorganization, reclassification or otherwise, then each share of Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or property to which a holder of the number of shares of Common Stock of the corporation deliverable upon conversion of such shares of Preferred Stock immediately prior to such reorganization, reclassification or other event shall have been entitled upon such reorganization, reclassification or other event.

(iv) Adjustments for Diluting Issues. In addition to the adjustment of the Conversion Prices provided above, the Conversion Price of the Series A Preferred Stock, Series B Preferred Stock and the Series C Preferred Stock and the Series D Preferred Stock shall be subject to further adjustment from time to time as follows:

(A) Special Definitions.

(1) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(2) "Original Issue Date" shall mean, for each series of Preferred Stock, the date on which the first share of that series of Preferred Stock was first issued.

(3) "Convertible Securities" shall mean securities convertible into or exchangeable for Common Stock, either directly or indirectly.

(4) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 3(e)(iv)(C) deemed to be issued) by the

corporation after the Original Issue Date other than shares of Common Stock issued (or, pursuant to Section 3(e)(iv)(C) deemed to be issued):

- i) upon conversion of shares of Preferred Stock;
- ii) to employees, consultants or directors pursuant to stock option, stock grant, stock purchase or similar plans or arrangements approved by the Board of Directors (provided that such plans or arrangements are approved by at least two (2) of the directors who are elected by a series of Preferred Stock voting separately as a class (a "Series Director"), including, without limitation, upon the exercise of Options outstanding as of the Original Issue Date;
- iii) to equipment lessors, banks, financial institutions or similar entities in transactions approved by the Board of Directors, the principle purpose of which is other than the raising of capital;
- iv) as a dividend or other distribution in connection with which an adjustment to the Conversion Price is made pursuant to Section 3(e)(i), (ii) or (iii);
- v) in the corporation's Qualified Initial Public Offering;
- vi) in a merger or acquisition that is approved by the Board of Directors;
- vii) pursuant to any transactions approved by the Board of Directors, provided that at least two of the Series Directors approve such transaction, primarily for the purpose of (A) joint ventures, technology licensing or research and development activities, (B) distribution or manufacture of the corporation's products or services, or (C) any other transactions involving corporate partners that are primarily for purposes other than raising capital, provided that the percentage of shares issued pursuant to any such transaction does not exceed five percent (5%) of the total outstanding shares of stock of the Corporation where the percentage of shares issued pursuant to any such transaction is equal to a fraction, the numerator of which is the number of shares being issued and the denominator is the number of shares of Common Stock outstanding and Preferred Stock outstanding, on an as-converted basis, plus the number of shares reserved for issuance pursuant to the corporation's option plan then in effect; or
- viii) if the holders of a majority of the then outstanding shares of each series of Preferred Stock agree in writing that such shares shall not constitute Additional Shares of Common Stock.

(B) No Adjustment of Conversion Price. No adjustment in the Conversion Price shall be made pursuant to Section 3(e)(iv)(D) unless the consideration per share for an Additional Share of Common Stock issued (or, pursuant to Section 3(e)(iv)(C), deemed to be

issued) by the corporation is less than the Conversion Price in effect on the date of, and immediately prior to, such issue, and provided that any such adjustment shall not have the effect of increasing the Conversion Price to an amount that exceeds the Conversion Price existing immediately prior to such adjustment.

**(C) Deemed Issue of Additional Shares of Common Stock.**

Except as otherwise provided in Section 3(e)(iv)(A) or 3(e)(iv)(B), in the event the corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of any holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that in any such case in which additional shares of Common Stock are deemed to be issued:

(1) no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the corporation, or increase or decrease in the number of shares of Common Stock issuable, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof or upon the occurrence of a record date with respect thereto, and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease;

(3) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof or upon the occurrence of a record date with respect thereto, and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

i) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities, and the consideration received therefor was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration actually received by the corporation upon such exercise, or for the issue of all such

Convertible Securities, whether or not converted or exchanged, plus the additional consideration, if any, actually received by the corporation upon such conversion or exchange; and

ii) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options and the consideration received by the corporation for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the corporation upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(4) no readjustment pursuant to Section 3(e)(iv)(C)(2) or (3) above shall have the effect of increasing the Conversion Price to an amount which exceeds the Conversion Price existing immediately prior to the original adjustment with respect to the issuance of such Options or Convertible Securities, as adjusted for any Additional Shares of Common Stock issued (or, pursuant to Section 3(e)(iv)(C), deemed to be issued) between such original adjustment date and such readjustment date;

(5) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Conversion Price shall be made until the expiration or exercise of all such Options; and

(6) in the case of any Option or Convertible Security with respect to which the maximum number of shares of Common Stock issuable upon exercise or conversion or exchange thereof is not determinable, no adjustment to the Conversion Price shall be made until such number becomes determinable.

(D) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. Subject to the limitation set forth in Section 3(e)(iv)(B), above, if Additional Shares of Common Stock are issued (or, pursuant to Section 3(e)(iv)(C), deemed to be issued) without consideration or for a consideration per share (computed on an as-converted to Common Stock basis) less than a Conversion Price in effect on the date of, and immediately prior to, such issue (a "Dilutive Issue"), then and in such event, such Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying such Conversion Price by a fraction, (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price, and (y) the denominator of which shall be the number of shares of Common stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued. For the purposes of this Section 3(e)(iv)(D), all shares of Common Stock issuable upon exercise of outstanding Options, upon conversion of outstanding Convertible Securities and Preferred Stock, shall be deemed to be outstanding, and immediately after any Additional Shares of Common Stock

are deemed issued pursuant to Section 3(e)(iv)(C), such Additional Shares of Common Stock shall be deemed to be outstanding.

(E) **Determination of Consideration.** For purposes of this Section 3(e)(iv), the consideration received by the corporation for any Additional Shares of Common Stock issued (or, pursuant to Section 3(e)(iv)(C), deemed to be issued) shall be computed as follows:

(1) **Cash and Property.** Such consideration shall:

i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the corporation after deducting any commissions paid by the corporation with respect to such issuance;

ii) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issuance, as determined in good faith by the Board of Directors of the corporation; and

iii) if Additional Shares of Common Stock are issued (or, pursuant to Section 3(e)(iv)(C), deemed to be issued) together with other shares or securities or other assets of the corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (A) and (B) above, as determined in good faith by the Board of Directors of the corporation.

(2) **Options and Convertible Securities.** The consideration received by the corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 3(e)(iv)(C), relating to Options and Convertible Securities, shall be the sum of (x) the total amount, if any, received or receivable by the corporation as consideration for the issue of such Options or Convertible Securities, plus (y) the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

(f) **Certificate as to Adjustments.** Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 3, the corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock to which such adjustment pertains a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Prices at the time in effect, and (iii) the number



of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such holder's Preferred Stock.

#### **Section 4. Voting.**

(a) **General.** Except as otherwise required by law, each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock so held could be converted at the record date for determination of the stockholders entitled to vote, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Except as required by law or as otherwise set forth herein (including without limitation Sections 4(b) – (f)), all shares of all series of Preferred Stock and all shares of Common Stock shall vote together as a single class. Fractional votes by the holders of Preferred Stock shall not, however, be permitted, and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) be rounded down to the nearest whole number.

(b) **Election of Directors.** The authorized number of directors of the corporation shall be set forth in the Bylaws of the corporation and may be increased or decreased by an amendment to such Bylaws in accordance with their provisions. For so long as at least 2,000,000 shares of Series A Preferred Stock remain outstanding (as adjusted for recapitalizations, stock combinations, stock dividends, stock splits and the like), the holders of shares of Series A Preferred Stock, voting separately as a class, shall be entitled to elect one (1) director of the corporation at each annual election of directors (and to fill any vacancies with respect thereto). For so long as at least 375,000 shares of Series B Preferred Stock remain outstanding (as adjusted for recapitalizations, stock combinations, stock dividends, stock splits and the like), the holders of Series B Preferred Stock, voting separately as a class, shall be entitled to elect one (1) director of the corporation at each annual election of directors (and to fill any vacancies with respect thereto). For so long as at least 1,976,064 shares of Series C Preferred Stock remain outstanding (as adjusted for recapitalizations, stock combinations, stock dividends, stock splits and the like), the holders of Series C Preferred Stock, voting separately as a class, shall be entitled to elect one (1) director of the corporation at each annual election of directors (and to fill any vacancies with respect thereto). For so long as at least 6,101,566 shares of Series D Preferred Stock remain outstanding (as adjusted for recapitalizations, stock combinations, stock dividends, stock splits and the like), the holders of Series D Preferred Stock, voting separately as a class, shall be entitled to elect one (1) director of the corporation at each annual election of directors (and to fill any vacancies with respect thereto). The Common Stock and Preferred Stock, voting together as a single class, shall be entitled to elect all remaining directors at each annual election of directors (and to fill any vacancies with respect thereto).

(c) **Approval by Class.** The corporation shall not, without first obtaining the approval of the holders of not less than a majority of the then outstanding total number of shares of Preferred Stock:

(i) effect a consolidation, reorganization or merger of the corporation with or into any other corporation, which would result in the stockholders of the corporation immediately prior to such consolidation, reorganization or merger owning less than 50% of the voting power of the corporation after such consolidation; or

(ii) effect a sale or other disposition of all or substantially all of the assets of the corporation in one or a series of related transactions of the corporation.

(d) **Approval by Preferred Stock.** The corporation shall not, without first obtaining the approval of the holders of not less than a majority of the then outstanding total number of shares of each series of Preferred Stock:

(i) increase the number of authorized shares of Preferred Stock or any series of Preferred Stock;

(ii) authorize, create or issue any shares of any class or series of stock having any preference or priority superior to or on parity with any such preference or priority of any outstanding series of Preferred Stock;

(iii) amend or repeal any provision of, or add any provision to, the corporation's Certificate of Incorporation if such action would adversely alter or change in any material respect the rights, preferences, privileges, or restrictions of any outstanding series of Preferred Stock;

(iv) take any action resulting in the repurchase or redemption of shares of Common Stock of the corporation, except as set forth in Section 5 hereof;

(v) pay any dividends on its Common Stock;

(vi) pay any dividends on any series of Preferred Stock unless such dividend is paid on all outstanding series of Preferred Stock; or

(vii) liquidate or dissolve the corporation.

(e) **Approval by Series C Preferred Stock.** The corporation shall not, without first obtaining the approval of the holders of not less than a majority of the then outstanding total number of shares Series C Preferred Stock effect (i) a consolidation, reorganization or merger of the corporation with or into any other corporation, which would result in the stockholders of the

corporation immediately prior to such consolidation, reorganization or merger owning less than 50% of the voting power of the corporation after such consolidation, or (ii) a sale or other disposition of all or substantially all of the assets of the corporation in one or a series of related transactions of the corporation, provided, however, that the provisions of this Section 4(d) shall only apply if such consolidation, merger, reorganization or sale or other disposition of assets provides for aggregate per share consideration to each holder of Series C Preferred Stock of less than \$2.82.

(f) **Approval by Series D Preferred Stock** The corporation shall not, without first obtaining the approval of the holders of not less two-thirds of the then outstanding total number of shares of Series D Preferred Stock:

(i) authorize, create or issue any shares of any class or series of stock having any preference or priority superior to or on parity with any such preference or priority of Series D Preferred Stock;

(ii) increases the authorized number of shares of Series D Preferred;

(iii) amend or repeal the Company's Certificate of Incorporation or Bylaws in a manner that materially and adversely affects the holders of Series D Preferred; or

(iv) materially amends the rights, preferences or privileges of the Series D Preferred as a class.

**Section 5. Consent to Distributions.** Each holder of Preferred Stock shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the California Corporations Code and Sections 1 and 2 of this Article Four, to distributions made by the corporation in connection with the repurchase of shares of Common Stock from employees, officers, directors or consultants of the corporation in connection with the termination of their employment or services pursuant to agreements or arrangements approved by the Board of Directors of the corporation.

**Section 6. Reacquired Shares.** Any shares of Preferred Stock purchased or otherwise acquired by the corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein, including, without limitation, Article THREE, Section 3(d).

**Section 7. Waiver of Rights, Preferences or Privileges.** Any right, preference or privilege of the Preferred Stock may be waived by a majority of the outstanding shares of each series of Preferred Stock voting on an as converted to Common Stock basis, and such waiver shall be binding on all holders of Preferred Stock. Notwithstanding the foregoing, any right preference or privilege of the Series D Preferred Stock set forth in Section 4(f) hereof may only be waived by two-

thirds (2/3) of the outstanding shares of Series D Preferred Stock voting on an as converted to Common Stock basis, and such waiver shall be binding on all holders of Series D Preferred Stock.

**FIVE.** The corporation is to have perpetual existence.

**SIX.** Except as set forth in Article Four, Section 4(b) hereof, the number of directors which constitute the whole Board of the corporation shall be as specified in the Bylaws of the corporation.

**SEVEN.** In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the corporation is expressly authorized to make, alter, amend or repeal the Bylaws of the corporation.

**EIGHT.** Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the corporation shall so provide.

**NINE.** Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the corporation may provide. The books of the corporation may be kept outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors of the corporation or in the Bylaws of the corporation.

**TEN.**

(a) **Limitation of Director's Liability.** To the fullest extent not prohibited by the General Corporation Law of Delaware as the same exists or as it may hereafter be amended, a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for conduct as a director.

(b) **Indemnification of Corporate Agents.** The corporation may indemnify to the fullest extent not prohibited by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person, such person's testator or intestate is or was a director, officer, employee benefit plan fiduciary, agent or employee of the corporation or any predecessor of the corporation or serves or served at the request of the corporation or any predecessor of the corporation as a director, officer, agent, employee benefit plan fiduciary or employee of another corporation, partnership, limited liability company, joint venture, trust or other entity or enterprise.

(c) **Repeal or Modification.** Neither any amendment or repeal of this Article Ten, nor the adoption of any provision of the corporation's Certificate of Incorporation inconsistent with this Article Ten, shall eliminate or reduce the effect of this Article Ten, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article Ten, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision."

4. The foregoing amendment and restatement of the Certificate of Incorporation has been duly approved by the Board of Directors of the corporation in accordance with the provisions of Sections 242 and 245 of the General Corporation Law.

5. The foregoing amendment and restatement of the Certificate of Incorporation has been duly approved by the written consent of the stockholders in accordance with Sections 228 and 245 of the Delaware General Corporation Law. The total number of outstanding shares of Common Stock of the corporation is 593,350. The total number of outstanding shares of Series A Preferred Stock of the corporation is 4,000,000. The total number of outstanding shares of Series B Preferred Stock of the corporation is 500,000. The total number of outstanding shares of Series C Preferred Stock is 3,973,666. The number of shares held by stockholders who consented to this amendment in writing equaled or exceeded the required percentage. Pursuant to Section 228 of the General Corporation Law, prompt written notice of this amendment and restatement has been given to all stockholders who did not consent to this amendment.

03/00

10:25

WILSON SONSINI → 302 674 8219

NO.300 P018


IN WITNESS WHEREOF, the corporation has caused this Amended and Restated Certificate of Incorporation to be signed by Chris King, its Chief Executive Officer, and attested to by Timothy E. Morris, its Secretary, this 9 day of March 2000.

UTILITY.COM, INC.



Chris King,  
Chief Executive Officer

ATTEST:

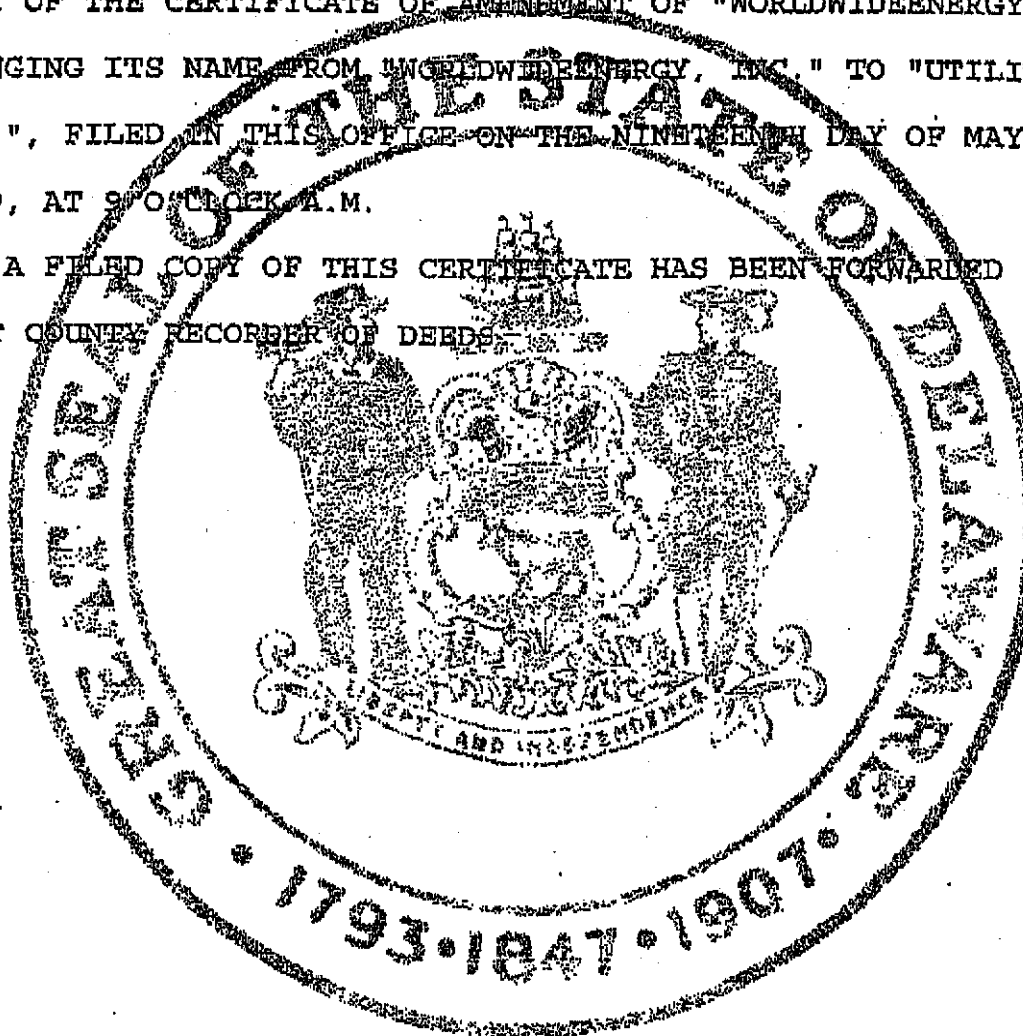
  
Timothy E. Morris,  
Secretary

*State of Delaware*  
*Office of the Secretary of State*

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "WORLDWIDEENERGY, INC.", CHANGING ITS NAME FROM "WORLDWIDEENERGY, INC." TO "UTILITY.COM, INC.", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF MAY, A.D. 1999, AT 9:00 CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



*Edward J. Freel*  
Edward J. Freel, Secretary of State

SENT BY:

5-24- 0 ; 8:29AM ;

UTILITY.COM-JSlocum

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STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 09:00 AM 05/19/1999  
992199060 - 2962225

**CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
WORLDWIDEENERGY, INC.**

Pursuant to Section 242 of the General Corporation  
Law of the State of Delaware

The undersigned, pursuant to the provisions of the General Corporation Law of the State of Delaware, does hereby certify and set forth as follows:

**FIRST:** The name of the corporation is WorldWideEnergy, Inc.

**SECOND:** The amendment to the Certificate of Incorporation to be effected hereby is as follows:

Paragraph One of the Certificate of Incorporation, relating to the name of the corporation is amended to read as follows:

**"ONE.** That the name of the corporation is: "Utility.com, Inc."

IN WITNESS WHEREOF, we have hereunto set our hands and seal this 19th day of May, 1999.

By:   
Junona Jones, President



STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 09:00 AM 11/03/1998  
981422234 - 2962225

## CERTIFICATE OF INCORPORATION

OF

**WORLDWIDEENERGY, INC.**

A Delaware Corporation

**FIRST:** The name of the corporation is WorldWideEnergy, Inc.

**SECOND:** The address of the corporation's registered office in the State of Delaware is 15 East North Street, P.O. Box 899, City of Dover, County of Kent, Delaware 19901. The name of its registered agent at such address is Incorporating Services, Ltd.

**THIRD:** The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

**FOURTH:** The corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares of Common Stock that the corporation is authorized to issue is 10,000,000, with a par value of \$0.001 per share. The total number of shares of Preferred Stock that the corporation is authorized to issue is 5,000,000 with a par value of \$0.001 per share.

The Preferred Stock may be divided into such number of series as the Board of Directors may determine. The Board of Directors is authorized to determine and alter the rights, preferences, privileges and restrictions granted to and imposed upon any wholly unissued series of Preferred Stock, and to fix the number of shares of any series of Preferred Stock and the designation of any such series of Preferred Stock. The Board of Directors, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, may increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series subsequent to the issue of shares of that series.

**FIFTH:** The name and mailing address of the incorporator are as follows:

Natasha Fain  
Wilson Sonzini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304-1050

**SIXTH:** The corporation is to have perpetual existence.

**SEVENTH:** In furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to make, alter, amend or repeal the Bylaws of the corporation, subject to the provisions of Article Nine of the Bylaws of the corporation.

**EIGHTH:** The number of directors which constitute the whole Board of the corporation shall be as specified in the Bylaws of the corporation.

**NINTH:** Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the corporation shall so provide.

**TENTH:** Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the corporation may provide. The books of the corporation may be kept outside of the State of Delaware at such place or places as may be designated from time to time by the Board or in the Bylaws of the corporation.

**ELEVENTH:**

(a) Limitation of Director's Liability. To the fullest extent not prohibited by the General Corporation Law of the State of Delaware as the same exists or as it may hereafter be amended, a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for conduct as a director.

(b) Indemnification of Corporate Agents. The corporation may indemnify to the fullest extent not prohibited by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person, such person's testator or intestate is or was a director, officer, employee benefit plan fiduciary, or employee of the corporation or any predecessor of the corporation or serves or served at the request of the corporation or any predecessor of the corporation as a director, officer, agent, employee benefit plan fiduciary or employee of another corporation, partnership, limited liability company, joint venture, trust or other entity or enterprise.

(c) Repeal or Modification. Neither any amendment or repeal of this Article Eleventh, nor the adoption of any provision of the corporation's Certificate of Incorporation inconsistent with this Article Eleventh, shall eliminate or reduce the effect of this Article Eleventh in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article Eleventh, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

SENT BY:

5-24- 0 ; 8:29AM ;

UTILITY.COM-JSlocum

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The undersigned incorporator hereby acknowledges that the foregoing Certificate of Incorporation is the act and deed of such incorporator and that the facts stated therein are true.

WORLDWIDEENERGY, INC.

  
Natasha Fain, Incorporator